

No.

6121

United States
Circuit Court of Appeals
For the Ninth Circuit.

SAN JOAQUIN LIGHT & POWER CORPORATION,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Northern Division.

FILED

MAR 11 1930

PAUL F. O'BRIEN,
CLERK

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INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

THOMAS R. DEMPSEY, Esq.,;

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Security Building, Los Angeles, California.

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SAMUEL W. McNABB, Esq.,

United States Attorney;

HARRY GRAHAM BALTER, Esq.,

Assistant United States Attorney,

Federal Building, Los Angeles, California.

DOCKET

DOCKET 417-J	TITLE OF CASE	ATTORNEYS
SAN JOAQUIN LIGHT & POWER CORPORATION		Thomas R. Dempsey Howard W. Reynolds
	vs.	For Plaintiff.
UNITED STATES OF AMERICA		..... For Defendant.

UNITED STATES DISTRICT COURT 47

DATE			FILINGS—PROCEEDINGS
Month	Day	Year	
Jul	19	1928	Filed Complaint for recovery income taxes.
"	26	"	" " Affid of service by mail compl.
Nov	3	"	Fld <u>Answer</u> on 11/2/28.
April	15	1929	Enter order settg for trial April 19, 1929.
"	17	"	" " contg to Apr. 26, 1929, for trial.
"	26	"	Fld Stip. & Order Contg for term.
Oct.	14	"	Ent ord cont'g to 11/18/29 for settg.
Nov	18	1929	Ent ord setting for trial for 11/19/29.
"	19	"	Ent proc on trial & ent ord cont'g to 12/16/29 at L. A. fur hrg. Fld 14 U. S. exh. Sw 1 US Wits. Ent ord allow'g certain amendments to complaint & answer which are made by counsel. Fld stip waiving jury.
Dec	16	1929	Ent ord contg further trial to 12/23/29.
Dec	23	1929	Ent proc. on further trial at Los Angeles & ent ord for entry of Judg. favor of plf. for \$9700 (or thereabouts) with costs, if entitled thereto by law, and for entry of judg. for debt as to balance, counsel for plf. to prepare findings & judg. Ent. ord. allow Gov. to amend answer which is amended accordingly. Fld 1 plf. exh. Fld. 1 debt ex.

- “ 31 “ Fld. ptf’s findings of fact & conclusions of law.
- Jan 10 1930 Ent judgt. favor ptf for \$9751.07 with int from 3/15/30 at 6% plus costs, in JBk 2/27. Dock & Ind. judgt.
- Mar 14 1930 Fld assign of errors. Fld petn for appeal.
- Mar 13 1930 Md for JR c min 11/19/29—12/23/29, c judgt, int JB 2/27. Dock & Index 1/10/30. Cert under seal & fld JR. Closed.
- Mar 18 1930 Fld citation on appeal sgd by Judge James & rect of service thereon, ret 4/12/30. Fld ptf’s prae for transe of record. Fld cost bond on appeal.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

SAN JOAQUIN LIGHT & POWER))	
CORPORATION,))	
Plaintiff and Appellant))	
v. )	)	At Law
	)	No. 417-J.
	)	CITATION
UNITED STATES OF AMERICA,))	
Defendant and Appellee))	

UNITED STATES OF AMERICA SS: TO UNITED STATES OF AMERICA AND TO ITS ATTORNEYS, WILLIAM D. MITCHELL, ESQ., S. W. McNABB, ESQ., H. G. BALTER, ESQ. and ALVA C. BAIRD, ESQ., GREETING:

You and each of you are hereby notified that in that certain case in the District Court of the United States for the Southern District of California, Northern Division,

wherein the San Joaquin Light & Power Corporation is complainant and United States of America is defendant, an appeal has been allowed the plaintiff therein to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in said court at San Francisco, California on April 12, 1930 to show cause, if any there be, why the order and decision appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable William P. James Judge of the District Court of the United States for the Southern District of California, Northern Division, this 14th day of March, A. D., 1930.

Wm P. James

Dist. Judge, signing in lieu of
Judge Henning, resigned

Service and receipt of a copy of the foregoing citation acknowledged this 18 day of March 1930.

S. W. McNabb

Harry Graham Balter

[Endorsed]: United States Circuit Court of Appeals
For the Ninth Circuit San Joaquin Light & Power Corporation Appellant vs. United States of America Appellee
Filed Mar 18 1930 R. S. Zimmerman Clerk By Edmund L. Smith Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA NORTHERN DIVISION.

SAN JOAQUIN LIGHT AND)	
POWER CORPORATION,)	At Law.
	) No. 417-J
Plaintiff,)	COMPLAINT.
v.)	FOR
	) RECOVERY
UNITED STATES OF AMERI-)	OF INCOME
CA,)	TAXES.
Defendant.)	

The plaintiff herein, for cause of action against the de-
fendant herein, complains and alleges:

I.

That at all times herein mentioned the defendant,
United States of America, was and still is a sovereign
body politic.

II.

That at all times herein mentioned the plaintiff, San
Joaquin Light and Power Corporation, was and still is a
corporation duly organized and existing under and by vir-
tue of the laws of the State of California and having its
principal office and place of business at the City of Fresno,
County of Fresno, State of California, and within the
First Internal Revenue Collection District of said State of
California. That the plaintiff has at all times borne true
allegiance to the Government of the United States, and
has not in any way voluntarily aided, abetted or given
encouragement to rebellion against said Government, or
aided or abetted in any manner, or given comfort to, any
sovereign or government that is or ever has been at war
with the United States.

III.

Plaintiff is informed and believes, and on such information and belief alleges that at the time of the erroneous and illegal collection from the plaintiff and disbursement to the defendant of the taxes hereinafter referred to, Justus S. Wardell was the duly appointed, qualified and acting Collector of Internal Revenue in and for said First Collection District of California, and maintained his office as such Collector in the City and County of San Francisco, in said State of California; and that said Justus S. Wardell is not, at the time of the commencement of this suit, in office as such Collector of Internal Revenue.

IV.

That no action upon the claim herein referred to, other than herein set forth, has been taken before Congress or by any of the departments of the Government of the United States, or in any court other than by this complaint filed herein; that no assignment or transfer of said claims has ever been made and plaintiff is the sole owner thereof; that the plaintiff is justly entitled to the amount herein claimed from the defendant and there are no just credits or offsets against said claims which are known to the plaintiff.

V.

That within the time allowed by law therefor and on or about the 1st day of April, 1918, the plaintiff filed with said Justus S. Wardell, Collector of Internal Revenue at San Francisco, its income and profits tax return for the year 1917, wherefrom it appeared that the liability of the plaintiff for such taxes for said year 1917 was in the sum of \$28,571.32, which sum was paid by the plaintiff to said Collector of Internal Revenue on or about the 20th day

of August, 1918; that within the time allowed by law therefor, and on or about the 19th day of February, 1923, the plaintiff, in accordance with the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, filed with the Commissioner of Internal Revenue, through the office of said Collector, its claim for refund of \$5,121.66, on account of such taxes overpaid by the plaintiff for said year 1917 by reason of its failure to make proper allowance for construction interest entering into the basis for depreciation and on other grounds referred to in said claim for refund; that subsequently and on or about the 28th day of April, 1925, the Commissioner of Internal Revenue issued his Certificate of Overassessment, No. 519954, Schedule No. 13253, wherein and whereby it appeared that the plaintiff had been overassessed in the sum of \$2,819.16 and that the tax liability of the plaintiff for said year 1917 amounted to the sum of only \$25,752.16 and that said Collector of Internal Revenue had erroneously and illegally collected from the plaintiff the sum of \$2,819.16 in excess of the amount of taxes for which plaintiff was legally liable for said year 1917.

VI.

That said claim for refund has never been disallowed or rejected by the defendant or any officer or agency acting in behalf of the defendant, with respect to said sum of \$2,819.16, to which this suit relates, or any part thereof.

That plaintiff is informed and believes and on such information and belief alleges that no part of said sum of \$2,819.16 so overpaid has been credited against any income, war profits or excess-profits tax then or since due

and collectible from the plaintiff. That the defendant has failed and refused to refund or repay to plaintiff the said sum of \$2,819.16 thus erroneously and illegally collected from plaintiff, or any part thereof, and the whole of said sum is unpaid and due from the defendant to the plaintiff, together with interest thereon from the date of the collection thereof, as provided by law.

FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST THE DEFENDANT HEREIN, PLAINTIFF ALLEGES:

I.

Plaintiff adopts, repleads and realleges all of the allegations contained in paragraphs I, II, III and IV of the first Cause of Action hereinabove stated as fully, to all intents and purposes, as if the same were again set forth in full at this place.

II.

That within the time allowed by law therefor and on or about the 15th day of March, 1920, the plaintiff filed with said Justus S. Wardell, Collector of Internal Revenue, at San Francisco, a consolidated income and profits tax return for the year 1919, wherefrom it appeared that the liability of the plaintiff and certain other corporations for such taxes for said year 1919 was in the sum of \$117,-488.64, which sum was paid by the plaintiff to said Collector of Internal Revenue in four equal installments on or about the following dates, to-wit: March 15th, 1920, June 15th, 1920, September 15th, 1920 and December 14th, 1920; that within the time allowed by law therefor and on or about the 16th day of March, 1925, the plaintiff, in accordance with the provisions of law in that re-

gard and the regulations of the Secretary of the Treasury established in pursuance thereof, filed with the Commissioner of Internal Revenue through the office of said Collector, its claim for the refund of \$109,663.90 on account of taxes overpaid by the plaintiff for said year 1919, by reason of the ruling of the Commissioner of Internal Revenue to the effect that certain of said other corporations were not affiliated with the plaintiff and must themselves pay their respective taxes for said year, and on other grounds referred to in said claim for refund; that subsequently and on or about the 13th day of September, 1926, said Commissioner of Internal Revenue issued his Certificate of Overassessment, No. 780641, Schedule No. 21995, wherein and whereby it appeared that the plaintiff had been overassessed in the sum of \$105,599.56 and that the total tax liability of the plaintiff for said year 1919 amounted to the sum of \$11,889.08, and that said Collector of Internal Revenue had erroneously and illegally collected from plaintiff the sum of \$105,599.56, in excess of the amount of taxes for which plaintiff was legally liable for said year 1919.

III.

That said claim for refund has never been disallowed or rejected by the defendant or any officer or agency acting in behalf of the defendant, with respect to said sum of \$105,599.56 to which this suit relates, or any part thereof.

That plaintiff is informed and believes, and on such information and belief alleges that no part of said sum of \$105,599.56 has been credited against any income, war profits or excess profits tax then or since due and collectible from plaintiff. That the defendant has failed and refused to refund or repay to plaintiff the said sum of

\$105,599.56 thus erroneously and illegally collected from plaintiff, or any part thereof, excepting the sum of \$71,498.35 and interest thereon in the sum of \$26,687.83; and the balance of \$34,101.21 is unpaid and due from the defendant to the plaintiff, together with interest thereon from the date of the collection thereof, as provided by law.

WHEREFORE, the plaintiff prays for judgment against the defendant in the sum of \$36,920.37, together with interest thereon from the date of the collection thereof from the plaintiff, and such other and further relief as may to the court seem proper in the premises.

Thomas R. Dempsey

Howard W. Reynolds

Attorneys for Plaintiff

STATE OF CALIFORNIA)
) ss.
 COUNTY OF FRESNO)

W. E. Durfey being first duly sworn, on oath says: That he is an officer, to-wit, Secretary of San Joaquin Light and Power Corporation, plaintiff in the foregoing and above entitled action and makes this verification on behalf of said plaintiff; that he has read the within complaint, and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on his information and belief, and that as to those matters he believes it to be true.

W. E. Durfey

Subscribed and sworn to
 before me this 5th day of
 July 1928.

Jean Peterson

Notary Public in and for
 said County and State.

[Seal]

[Endorsed]: No 417 J Dept No Div In the District Court of the United States Southern District of California Northern Division San Joaquin Light and Power Corporation, Plaintiff, vs. United States of America, Defendant. Complaint. Filed Jul 19 1928 R. S. Zimmerman, Clerk By L. J. Cordes Deputy Clerk Thomas R. Dempsey Howard W. Reynolds Security Building Los Angeles, Calif. Attorneys for Plaintiff.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA NORTHERN DIVISION

SAN JOAQUIN LIGHT AND)	
POWER CORPORATION,)	
)	
	)	Plaintiff,
)	
)	
v.	)	At Law
	)	No. 417-J
	)	ANSWER.
UNITED STATES OF AMERICA,)	
)	
	)	Defendant.

Comes now the defendant, above-named, and answering plaintiff's complaint in the above-entitled action, admits, denies and alleges as follows:

ANSWERING THE ALLEGATIONS CONTAINED IN PLAINTIFF'S FIRST CAUSE OF ACTION -

I.

Admits the allegations contained in Paragraph I of the first cause of action in said complaint.

II.

Admits the allegations contained in Paragraph II of the first cause of action in said complaint.

III.

Answering the allegations contained in Paragraph III of the first cause of action in said complaint denies that the collection from the plaintiff or disbursements to the defendant of the taxes in said paragraph referred to, was erroneous or illegal; admits the remaining allegations in said Paragraph III.

IV.

Answering the allegations contained in Paragraph IV of the first cause of action of said complaint, denies that plaintiff is justly entitled to the amount or any part thereof in said paragraph claimed from the defendant; alleges that defendant has no information or belief sufficient to enable it to answer the remaining allegations in said paragraph contained and, basing its denial upon such ground, denies generally and specifically each and all of said allegations.

V.

Answering the allegations contained in Paragraph V of plaintiff's first cause of action in said complaint, denies that plaintiff filed its income and profits tax return for the year 1917 on March 30, 1918, but alleges that said return was filed April 1, 1918; denies that plaintiff filed its claim for refund of \$5,121.66 on account of said income and profits taxes for the year 1917 on February 17, 1923, but alleges that said claim for refund was filed on February 19, 1923; admits the remaining allegations in said paragraph contained.

VI.

Answering the allegations contained in Paragraph VI. of the first cause of action stated in said complaint, defendant denies that no part of the sum of \$2,819.17 in said paragraph mentioned has been credited against net income, war profits or excess profits tax then or since due or collectible from plaintiff, but alleges the fact to be that said sum of \$2,819.16 was on or about the month of September, 1926, credited against certain income, war profits and excess profits taxes then due, owing, unpaid and collectible from plaintiff to defendant, to wit, income, war profits and excess profits taxes for the calendar year 1918; defendant denies that such sum of \$2,819.16 or any part thereof was erroneously or illegally collected from plaintiff and denies that said sum or any part thereof, or interest thereon, is due from defendant to plaintiff.

ANSWERING THE ALLEGATIONS CONTAINED IN PLAINTIFF'S SECOND CAUSE OF ACTION IN SAID COMPLAINT, PLAINTIFF ADMITS, DENIES AND ALLEGES AS FOLLOWS:

I.

Defendant adopts, repleads and reallages all the allegations, admissions and denials contained in Paragraphs I, II, III and IV hereinabove set forth in its answer to plaintiff's first cause of action, with the same force and effect as if here set forth at length.

II.

Answering the allegations contained in Paragraph II of plaintiff's second cause of action in said complaint, denies that three of the four equal installments in said paragraph mentioned were paid by plaintiff to said Collector of Internal Revenue on June 14, 1920, September

13, 1920 and December 13, 1920, but alleges that said four installments were made on or about the following dates, to wit: March 15, 1920, June 15, 1920, September 15, 1920 and December 14, 1920, respectively; admits that the plaintiff filed with the Commissioner of Internal Revenue its claim for refund of \$109,663.90 on account of taxes claimed by plaintiff to have been overpaid for the year 1919; denies that said claim was filed March 13, 1925; alleges that said claim was filed March 16, 1925; denies that plaintiff's taxes for said year 1919 were overpaid in the amount of \$109,663.90; admits the remaining allegation in said paragraph contained.

III.

Answering the allegations contained in Paragraph III of the second cause of action in said complaint, the defendant denies that no part of the sum of \$105,599.56, in said paragraph mentioned, has been credited against any income, war profits or excess profits tax then or since due or collectible from plaintiff; alleges that of said sum of \$105,599.56, the sum of \$34,101.21 was on or about the month of September 1926, credited against certain income, war profits and excess profits tax for the calendar year 1918 and alleges that said income, war profits and excess profits tax was then and there due, owing and unpaid from plaintiff to defendant and was then collectible from plaintiff; alleges that the remainder of said sum of \$105,599.56, to wit, the sum of \$71,498.35, together with interest in the sum of \$26,687.83, was paid and refunded to plaintiff; denies that said sum of \$34,101.21 or any part thereof was erroneously or illegally collected from plaintiff; denies that said sum of \$34,101.21, or interest thereon, is due from defendant to plaintiff.

AND FOR A SECOND AND FURTHER SEPARATE AND DISTINCT DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION IN SAID COMPLAINT, DEFENDANT ALLEGES:

I.

That at all times herein mentioned the defendant, United States of America, was and still is a corporation sovereign and body politic.

II.

That at all times herein mentioned the plaintiff, San Joaquin Light & Power Corporation, was and still is a corporation organized and existing under and by virtue of the laws of the State of California, that its principal office and place of business is at the City of Fresno, County of Fresno, State of California, within the Northern Division of the Southern Judicial District of the State of California.

III.

That plaintiff filed its income and profits tax return for the calendar year 1918 on or about June 16, 1919; that upon a subsequent examination, audit and review, the Commissioner of Internal Revenue determined an additional tax in the sum of \$271,490.91 for said year 1918 to be due from plaintiff to defendant and on March 15, 1924, duly assessed against plaintiff said additional tax for said year in the said sum of \$271,490.31.

IV.

That on or about February 12, 1924, plaintiff and defendant entered into an agreement, in writing, whereby the period of limitation for determination, assessment and collection of plaintiff's income, excess profits and war profits taxes for the calendar year 1918, was extended for

the period of one year beyond the statutory period, to wit, to and including June 16, 1925;

That on or about August 29, 1924, plaintiff and defendant entered into a written agreement whereby the period of limitation for collection of income, excess profits and war profits taxes due from plaintiff to defendant for said year 1918 was extended for the period of one year after the expiration of the statutory period of limitation therefor, or the statutory period as extended by any waivers then on file with the Bureau of Internal Revenue within which assessments of taxes might have been made for said year.

V.

That on or about April 8, 1924, plaintiff filed its claim in abatement of said sum of \$271,490.31, additional income and profits taxes for said year 1918, assessed as aforesaid; that by reason of the filing of said claim in abatement the collection of said additional income and profits taxes in the said sum of \$271,490.31 was stayed and delayed pending the determination of said claim in abatement and until the actual collection of the rejected portion thereof in the manner more fully hereinafter set forth.

VI.

That on or about September 13, 1926, the Commissioner of Internal Revenue duly rejected said claim in abatement in the sum of \$36,920.36 and allowed said claim in abatement as to the balance thereof, leaving the said sum of \$36,920.37 additional income and profits taxes for the calendar year 1918 then and there due, owing and unpaid from plaintiff to defendant; that said sum remained

due, owing and unpaid until satisfied by the application of a credit as more fully hereinafter set forth.

VII.

That on or about April 1, 1918, plaintiff filed its income and excess profits tax return for the calendar year 1917 showing a liability for such taxes for said year in the sum of \$28,571.32, which sum was paid to defendant August 20, 1918.

VIII.

That thereafter the Commissioner of Internal Revenue duly determined the correct income and profits tax liability of plaintiff for the calendar year 1917 to be \$25,752.16, duly issued his certificate of overassessment of said tax for said year 1917 in the sum of \$2,819.16 and on or about February 2, 1926, duly signed his refund schedule therefor; that the said sum of \$2,819.16 was thereafter, to wit, on or about March 11, 1925, duly applied and credited by defendant against the balance of \$36,920.37, additional income and profits taxes for the year 1918, hereinabove mentioned.

AND FOR A SECOND AND FURTHER SEPARATE AND DISTINCT DEFENSE TO PLAINTIFF'S SECOND CAUSE OF ACTION IN SAID COMPLAINT DEFENDANT ALLEGES AS FOLLOWS:

I.

Defendant hereby refers to, repleads and adopts the allegations contained in Paragraphs I, II, III, IV, V and VI of defendant's second defense to plaintiff's first cause of action herein above set forth with the same force and effect as if here set forth at length.

II.

That on or about March 15, 1920, plaintiff filed its income and profits tax return for the calendar year 1919 showing a liability for said tax in the sum of \$117,488.64; that said sum was paid by plaintiff to defendant in four equal installments on or about the following dates, to wit: March 15, 1920, June 15, 1920, September 15, 1920, and December 14, 1920.

III.

That thereafter the Commissioner of Internal Revenue duly determined the correct income and profits tax liability of plaintiff for said calendar year 1919 to be \$11,889.08, duly issued his certificate of overassessment of said tax for said year 1919 in the sum of \$105,599.56. and on or about September 13, 1926, signed his refund schedule therefor; that of said sum of \$105,599.51 the sum of \$34,101.21 was on or about the month of September 1926, duly credited and applied by defendant against the balance of \$36,920.37 additional income and profits taxes for the calendar year 1918, and the remaining portion thereof, to wit, the sum of \$71,498.35, together with interest in the sum of \$26,687.83, was duly refunded to plaintiff;

WHEREFORE, defendant prays that plaintiff take nothing by its complaint; for judgment against plaintiff for its costs herein; and for such other relief as may be proper in the premises.

SAMUEL W. McNABB,

United States Attorney.

Emmett E Doherty

Assistant United States Attorney.

[Endorsed]: Original No. 417-J. In the District Court of the United States for the Southern Dist. of

California Northern Division San Joaquin Light & Power Corp. vs. United States of America. Answer. Received copy of the within answer this 2d day of Nov., 1928 Thomas R. Dempsey M C Attorney for Plaintiff Filed Nov- 3, 1928 R. S. Zimmerman, Clerk. By L. J. Cordes, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA NORTHERN DIVISION.

SAN JOAQUIN LIGHT &)
POWER CORPORATION,)
)
) Plaintiff,) AT LAW.
) NO. 417-J.
) FINDINGS OF
) FACT AND
 v.) CONCLUSIONS
) OF LAW.
 UNITED STATES OF AMERI-)
 CA,)
)
) Defendant.)

The above entitled cause coming on for trial at the City of Fresno, State of California, on the 19th day of November, 1929 and for a further hearing at the City of Los Angeles, State of California on the 23rd day of December, 1929, and having been tried before the above entitled court without a jury (a jury having been waived by written stipulation), Thomas R. Dempsey, Esq., and A. Calder Mackay, Esq., appearing for the plaintiff, and H. G. Balter, Esq. and Alva C. Baird, Esq., appearing for the defendant, and after hearing the allegations and proofs of the parties, the arguments of counsel and being

advised in the premises, the following Findings of Fact and Conclusions of Law stating the decision of the court in said action are hereby made and filed:

I.

That at all times herein mentioned the defendant, United States of America, was and still is a sovereign body politic.

II.

That at all times herein mentioned the plaintiff, San Joaquin Light & Power Corporation, was and still is a corporation duly organized and existing under and by virtue of the laws of the State of California and having its principal place of business at the City of Fresno, in the County of Fresno, State of California, within the Northern Division of the Southern Judicial District of the State of California and within the First Internal Revenue Collection District of said State of California. That the plaintiff has at all times borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against said government or aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

III.

That at the time of the collection from the plaintiff and the disbursement to the defendant of the taxes hereinafter referred to, Justus S. Wardell was the duly appointed, qualified and acting Collector of Internal Revenue in and for said First Collection District of California and maintained his office as such Collector in the City and County of San Francisco, in said State of California; and that said Justus S. Wardell was not at the time of the com-

mencement of this suit in office as such Collector of Internal Revenue.

IV.

That no action upon the claims hereinafter referred to, other than as herein set forth, has been taken before Congress or by any of the departments of the government of the United States or in any court other than by this suit; that no assignment or transfer of said claims has ever been made and plaintiff is the sole owner thereof.

V.

That on April 1, 1918, the plaintiff filed with said Justus S. Wardell, Collector of Internal Revenue at San Francisco, California, its income and profits tax return for the calendar year 1917 showing a liability for such taxes for said year in the sum of \$28,571.32, which sum was paid by the plaintiff to said Collector of Internal Revenue on August 20, 1918. That on February 19, 1923, the plaintiff filed with the Commissioner of Internal Revenue through the office of said Collector, its claim for refund of \$5,121.66 on account of such taxes overpaid by the plaintiff for said year 1917 upon certain grounds set forth in said claim for refund. That on February 2, 1925, the Commissioner of Internal Revenue determined the correct income and profits tax liability for the plaintiff for the calendar year 1917 to be \$25,752.16 and issued his Certificate of Overassessment of said tax for said year 1917 showing that the plaintiff had been overassessed in the sum of \$2,819.16 and that said Collector of Internal Revenue had collected from the plaintiff the said sum of \$2,819.16 in excess of the amount of such taxes for which plaintiff was legally liable for said year 1917. That said claim for refund has never been disallowed or rejected by

the defendant or any officer or agency acting in behalf of the defendant, with respect to said sum of \$2,819.16 or any part thereof; that said sum of \$2,819.16 so overpaid by the plaintiff for said year 1917 was, on March 11, 1925 credited by the Commissioner of Internal Revenue against income, war profits and excess profits taxes assessed against the plaintiff for the taxable year 1918 on March 15, 1924.

VI.

That on March 15, 1920 the plaintiff filed with said Justus S. Wardell, Collector of Internal Revenue at San Francisco, California a consolidated income and profits tax return for the calendar year 1919, wherefrom it appeared that the liability of the plaintiff and certain other corporations for such taxes for said year 1919 was in the sum of \$117,488.64, which sum was paid by the plaintiff to said Collector of Internal Revenue in four equal installments on the following dates, to-wit: March 15, June 15, September 15 and December 14, all in the year 1920; that within the time allowed by law and on March 16, 1925 the plaintiff filed with the Commissioner of Internal Revenue through the office of said Collector, its claim for the refund of \$109,663.90 on account of taxes overpaid by the plaintiff for said year 1919. That on September 13, 1926 said Commissioner of Internal Revenue determined the correct income and profits tax liability of the plaintiff for said calendar year 1919 to be \$11,889.08 and thereupon issued his Certificate of Overassessment of said tax for said year 1919 in the sum of \$105,599.56 and determined that said Collector of Internal Revenue had collected from the plaintiff the sum of \$105,599.56 in excess

of the amount of such taxes for which plaintiff was legally liable for said year 1919.

VII.

That said claim for refund has never been disallowed or rejected by the defendant or any officer or agency acting on behalf of the defendant with respect to said sum of \$105,599.56 or any part thereof, except that of said sum of \$105,599.56 so overpaid by the plaintiff for said taxable year 1919, the sum of \$34,101.21 was on September 13, 1926 credited against income, war profits and excess profits taxes assessed on March 15, 1924 against the plaintiff for the taxable year 1918. The balance thereof, to-wit, the sum of \$71,498.35 with interest thereon in the sum of \$26,687.83 was refunded by the defendant to the plaintiff during 1926.

VIII.

That on June 16, 1919 the plaintiff filed its consolidated income and profits tax return for the calendar year 1918 and for said year plaintiff paid as taxes to the defendant through said Collector of Internal Revenue the sum of \$14,647.18, which was paid on the dates and in the amounts as follows:

March 13, 1919	\$9,852.68
Sept. 13, 1919	1,132.70
Dec. 10, 1919	1,138.67
Dec. 12, 1919	2,523.13
	<hr/>
	14,647.18

That upon a subsequent examination, audit and review, the Commissioner of Internal Revenue determined an additional tax in the sum of \$271,490.31 for said year 1918

to be due from the plaintiff to the defendant and on March 15, 1924 duly assessed against the plaintiff said additional tax for said year 1918 in the said sum of \$271,490.31.

IX.

That notice and demand for said \$271,490.31 assessed as aforesaid on March 15, 1924 was duly made upon plaintiff by the Collector of Internal Revenue on March 25, 1924; that on April 5, 1924 plaintiff duly filed its claim in abatement, without bond, for said sum of \$271,490.31; that said claim in abatement was on September 13, 1926 by the Commissioner of Internal Revenue rejected in respect to \$36,920.36 of the amount claimed, and allowed as to the balance thereof; that on September 13, 1926 there was applied by defendant against the unabated assessment of \$36,920.36 the sum of \$34,101.21 representing the amount overpaid by the plaintiff for the year 1919 and evidenced by the Certificate of Overassessment issued to the plaintiff for the year 1919 as aforesaid; that no suit or proceeding to collect said tax of \$271,490.31 or any part thereof was instituted subsequent to the filing of said claim in abatement, other than by crediting overpayments for the taxable years 1917 and 1919 as aforesaid against said outstanding tax liability for the taxable year 1918 during the month of September, 1926 as aforesaid.

X.

That in rejecting plaintiff's claim in abatement to the extent of \$36,920.36 and determining that said sum represented the unpaid tax liability of plaintiff for the year 1918 the Commissioner of Internal Revenue did not take into account the fact that the sum of \$14,647.18 had been paid, on account of income and profits taxes for the year 1918 during the year 1919 as aforesaid; that of this sum

of \$14,647.18 plaintiff has had returned to it only the sum of \$4,896.11, and there remains due to plaintiff the sum of \$9,751.07.

XI.

That there was executed by plaintiff and the Commissioner of Internal Revenue a written instrument in words and figures as follows, to-wit:

“February 12, 1924
(Date)

INCOME AND PROFITS TAX WAIVER

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, San Joaquin Light & Power Corp. , of Fresno, California and the Commissioner of Internal Revenue, hereby consent to a determination, assessment, and collection of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of the said corporation for the years 1917 and 1918 under the Revenue Act of 1921, or under prior income, excess-profits, or war-profits tax Acts, or under Section 38 of the Act entitled ‘An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes’, approved August 5, 1909. This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation, or the statutory period of limitation as extended by any waivers already on file with the

Bureau, within which assessments of taxes may be made for the year or years mentioned.

SAN JOAQUIN LIGHT & POWER CORP.

(SEAL)

Taxpayer

By A. E. Peat, Treas.

By O. L. Whitehill, Asst. Secy.

D. H. Blair

Commissioner

C.D.H.

If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed."

XII.

That there was executed by plaintiff and the Commissioner of Internal Revenue a written instrument in words and figures as follows, to-wit:

"August 29, 1924

(date)

INCOME AND PROFITS TAX WAIVER

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, San Joaquin Light & Power Corporation, of Fresno, California and the Commissioner of Internal Revenue, hereby consent to a determination, assessment, and collection of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of the said San Joaquin Light & Power Corporation for the years 1918 and 1919

under the Revenue Act of 1921, or under prior income, excess-profits, or war-profits tax Acts, or under Section 38 of the Act entitled, 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes', approved August 5, 1909. This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation, or the statutory period of limitation as extended by any waivers already on file with the Bureau, within which assessments of taxes may be made for the year or years mentioned.

San Joaquin Light & Power Corp.,
Taxpayer

(SEAL)

By (Signed) W. E. Durfey
Asst. Sec'y.

(Signed) D. H. Blair
Commissioner.

If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed."

CONCLUSIONS OF LAW.

I.

That plaintiff is entitled to judgment against the defendant in the sum of \$9,751.07, together with interest thereon at the legal rate of six (6) per cent per annum from March 15, 1920, plus the costs of this action in the

sum of \$13.00 representing filing fees paid to the court clerk.

II.

That the instruments designated "waivers" signed by plaintiff and the Commissioner of Internal Revenue extended the period of assessment and collection of the additional taxes for the year 1918 to June 16, 1926 and therefore, under the provisions of Section 278 (d) of the Revenue Act of 1926 the Commissioner of Internal Revenue had six years after the date of the assessment within which to enforce the collection of said additional taxes for the year 1918.

III.

That the claim in abatement filed by plaintiff stayed collection of the additional taxes for the year 1918 and therefore, under the provisions of Sec. 611 of the Revenue Act of 1928 the action of the Commissioner of Internal Revenue in crediting against the additional taxes for the year 1918 the sum of \$22,273.18 was legal and correct.

Let judgment be entered accordingly.

Dated at Los Angeles, California, December 31st, 1929.

Edward J. Henning

Judge.

Approved as to form as provided in Rule 44, Subject, however to defendant's right to urge inclusion of additional findings of fact

SAMUEL W. MCNABB,

United States Attorney,

Harry Graham Balter

HARRY GRAHAM BALTER,

Assistant United States Attorney

[Endorsed]: No 417-J In the District Court of the United States Southern District of California Northern Division San Joaquin Light & Power Corporation, Plaintiff, v. United States of America, Defendant. Findings of Fact and Conclusions of Law. Filed Dec 31 1929 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk Thomas R. Dempsey A. Calder Mackay Security Building Los Angeles, Calif, Attorneys for Plaintiff.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA NORTHERN DIVISION.

SAN JOAQUIN LIGHT & POWER)
CORPORATION,)
)
) Plaintiff,)
))
) v.) No. 417-J
) JUDGMENT.
)
) UNITED STATES OF AMERICA,)
))
) Defendant.)

This cause came on regularly for trial at the City of Fresno, State of California, on the 19th day of November, 1929 and for a further hearing at the City of Los Angeles, State of California on the 23rd day of December, 1929, Thomas R. Dempsey, Esq., and A. Calder Mackay, Esq., appearing as counsel for plaintiff, and H. G. Balter, Esq. and Alva C. Baird, Esq. appearing as counsel for defendant. A trial by jury having been waived by counsel for the respective parties, the cause was tried before the Honorable Judge Edward J. Henning sitting without a

jury, whereupon witnesses were examined and evidence was produced on behalf of the parties, and the evidence being closed, the cause was submitted to the court for consideration and decision; and after due deliberation thereon the court in open court gave judgment for the plaintiff in the sum of \$9,751.07, together with interest thereon at the legal rate of six per cent per annum from March 15, 1920, together with costs of court in the sum of \$13.00, and denied judgment for the balance of the amount sought in plaintiff's complaint, and thereafter, the Honorable Judge Edward J. Henning having signed the Findings of Fact and Conclusions of Law ordered that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the decision aforesaid, it is hereby ORDERED AND ADJUDGED that the plaintiff, San Joaquin Light & Power Corporation, do have and recover of and from the defendant the sum of \$9,751.07, together with interest thereon at the legal rate of six per cent per annum from the 15th day of March, 1920, plus costs of court in the sum of \$13.00;

It is further ORDERED AND ADJUDGED that the plaintiff do not recover from the defendant the balance of the amount claimed in its complaint.

JUDGMENT ENTERED JANUARY 10th, 1930.

R. S. ZIMMERMAN, Clerk,

By Francis E. Cross

Deputy Clerk.

[Endorsed]: No 417-J In the District Court of the United States Southern District of California Northern Division San Joaquin Light & Power Corporation, Plain-

tiff, v. United States of America, Defendant. Judgment. Filed Jan. 10, 1939 R S Zimmerman, Clerk. Thomas R. Dempsey A. Calder Mackay Security Building Los Angeles. Calif. Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA NORTHERN DIVISION.

SAN JOAQUIN LIGHT & POWER))	
CORPORATION,))	
)	
)	
Plaintiff, )	)	No. 417-J
	)	PETITION
v. )	)	FOR
	)	APPEAL
UNITED STATES OF AMERICA,))	
)	
Defendant.))	

The above named plaintiff feeling itself aggrieved by that portion of the judgment of the United States District Court for the Southern District of California, Northern Division, denying plaintiff judgment against the defendant in the sum of Twenty-two Thousand, Two Hundred Seventy-three Dollars and Eighteen Cents (\$22,273.18) together with legal interest, entered in this cause on the 10th day of January, 1930, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith and plaintiff prays that its appeal be allowed and that citation issue as provided by law and that a transcript of the record, pro-

ceedings and papers upon which said judgment is based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security for costs to be required of it to perfect its appeal be made.

Thomas R. Dempsey

Thomas R. Dempsey

A. Calder Mackay

A. Calder Mackay

Howard W. Reynolds

Attorneys for Petitioner.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of \$300—

Wm. P. James

Dist. Judge.

[Endorsed]: No 417-J In the District Court of the United States Southern District of California Northern Division San Joaquin Light & Power Corporation, Plaintiff v. United States of America, Defendant, Petition for Appeal. Filed Mar 14 1930 R. S. Zimmerman R. S. Zimmerman, Clerk Thomas R. Dempsey A Calder Mackay Security Building Los Angeles, Calif, Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA NORTHERN DIVISION.

SAN JOAQUIN LIGHT &))	
POWER CORPORATION,))	
)	
Plaintiff,))	
	)	No. 417-J
v. )	)	ASSIGNMENT
	)	OF
UNITED STATES OF AMERI- )	)	ERRORS.
CA,))	
)	
Defendant.))	

Comes now the plaintiff by its attorneys, Thomas R. Dempsey, A. Calder Mackay and Howard W. Reynolds, and says that the judgment entered in the above entitled cause on the 10th day of January, 1930 is erroneous and unjust to plaintiff in that:

FIRST: The trial court erred in holding that the Commissioner of Internal Revenue had six years subsequent to March 15, 1924, the date of the assessment of additional taxes for the year 1918, within which to collect additional taxes for said year.

SECOND: The trial court erred in holding that the collection of additional taxes for the year 1918 was stayed by the filing of a claim for the abatement of the assessment made on March 15, 1924 for additional taxes for the year 1918.

THIRD: The trial court erred in failing and refusing to hold that plaintiff's liability for additional taxes for the year 1918 as asserted by the Commissioner of Internal Revenue became extinguished at the close of June 16, 1926.

FOURTH: The trial court erred in holding that the action of the Commissioner of Internal Revenue in crediting on September 13, 1926 the sum of \$22,273.18, representing taxes overpaid by plaintiff for the years 1917 and 1919, against additional taxes then asserted for the year 1918, was legal and correct.

FIFTH: The trial court erred in failing to give plaintiff judgment for the full amount claimed in its complaint, to-wit, the sum of \$36,920.36, plus interest as provided by law.

WHEREFORE plaintiff prays that this appeal be allowed and that the United States Circuit Court of Appeals for the Ninth Circuit may review the action of the trial court in this cause, reverse that portion of its decision denying plaintiff the relief sought and direct the entry of a decision by said court in favor of plaintiff for the sum of \$22,920.36, together with interest as provided by law, and for such other and further relief as may be deemed meet and proper in the premises.

Thomas R. Dempsey

Thomas R. Dempsey

A. Calder Mackay

A. Calder Mackay

Howard W. Reynolds

Attorneys for plaintiff

[Endorsed]: No. 417-J In the District Court of the United States Southern District of California Northern Division San Joaquin Light & Power Corporation, Plaintiff v. United States of America, Defendant. Assignment of Errors. Filed Mar 14 1930 R. S. Zimmerman, R. S. Zimmerman, Clerk Thomas R. Dempsey A. Calder Mackay Security Building Los Angeles, Calif Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA NORTHERN DIVISION.

SAN JOAQUIN LIGHT &))	
POWER CORPORATION,))	
)	
Plaintiff,))	
	)	AT LAW.
v. )	)	No. 417-J.
	)	APPEAL BOND
UNITED STATES OF AMERI- )	)	FOR COSTS.
CA,))	
)	
Defendant.))	

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Fidelity and Casualty Company of New York, a corporation duly organized and existing under and by virtue of the laws of the State of New York and duly licensed to transact its business in the State of California, as surety is held and firmly bound unto the United States of America in the full and just sum of Three Hundred Dollars (\$300.00) to be paid to the said United States of America, its attorneys, successors or assigns, to which payment well and truly to be made the undersigned binds itself, its successors and assigns by these presents.

Signed and dated this 17th day of March, A. D. 1930.

Whereas, lately at a regular term of the District Court of the United States for the Southern District of California, Northern Division, sitting at the City of Fresno, in said District, in a suit pending in said Court between San Joaquin Light & Power Corporation, as plaintiff, and the United States of America, as defendant, Cause No.

417-J, on the law docket of said Court, final judgment was rendered against the said plaintiff denying the right of the said plaintiff to recover against the defendant in the sum of Twenty-two Thousand Two Hundred Seventy-three Dollars and Eighteen Cents (\$22,273.18), together with legal interest, which judgment was entered on the 10th day of January, 1930, and the said plaintiff has obtained an appeal to reverse the judgment of said Court in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing it to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco, State of California on the 12th day of April, A. D. 1930.

Now, the condition of the above obligation is such that if the said San Joaquin Light & Power Corporation shall prosecute its appeal to effect and answer all costs if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

IN WITNESS WHEREOF, the undersigned, Fidelity and Casualty Company of New York has caused its name to be subscribed and its corporate seal to be affixed hereunto by its proper attorney thereunto duly authorized.

FIDELITY AND CASUALTY COMPANY
OF NEW YORK

[Seal]

By William E. Fortney

Attorney in Fact

Approved this 18 day of March, A. D. 1930.

Wm. P. James

District Judge,

signing for Henning, J, Resigned.

Examined and recommended for approval as provided in Rule 28.

Howard W. Reynolds
Attorney.

State of California }
County of Los Angeles } ss.

On this 17th day of March in the year One Thousand Nine Hundred and Thirty before me, F. W. Weitzel a Notary Public in and for the said.....County of Los Angeles residing therein, duly commissioned and sworn, personally appeared William E. Fortney known to me to be the ATTORNEY of THE FIDELITY and CASUALTY COMPANY OF NEW YORK, the Corporation that executed the within instrument, and known to me to be the person who executed the said instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of Los Angeles the day and year in this certificate first above written.

[Seal]

F. W. Weitzel

Notary Public in and for the.....County of Los Angeles State of California.

[Endorsed]: No 417-J In the District Court of the United States Southern District of California Northern Division San Joaquin Light & Power Corporation, Plaintiff, v. United States of America, Defendant. Appeal Bond for Costs. Filed Mar 18 1930 R. S. Zimmerman Clerk By Edmund L. Smith Deputy Clerk Thomas R. Dempsey Howard W. Reynolds A. Calder Mackay Security Building Los Angeles, Calif. Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA NORTHERN DIVISION.

SAN JOAQUIN LIGHT & POWER)	
CORPORATION,)	
)
Plaintiff,)	
)
v.)	No. 417-J
	) PRAECIPE.
)
UNITED STATES OF AMERICA,)	
)
Defendant.)	

TO THE CLERK OF THE DISTRICT COURT OF
THE UNITED STATES FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, NORTHERN DIVI-
SION:

The plaintiff above named, having perfected an appeal in this cause to the United States Circuit Court of Appeals for the Ninth Circuit, hereby requests you to prepare, at plaintiff's expense, a transcript of the record on appeal in this cause, including therein the following papers and proceedings which it is requested you transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

- (1) Docket entries of proceedings before the District Court.
- (2) All pleadings before the District Court.
- (3) Findings of Fact and Conclusions of Law.
- (4) Judgment of the Court.
- (5) Petition for and order allowing appeal and fixing amount of bond.
- (6) Assignment of Errors.

- (7) Bond on appeal for costs.
- (8) Praeipce for transcript of record.
- (9) Citation on Appeal.
- (10) The Clerk's certification of record.

Thomas R. Dempsey

Thomas R. Dempsey

A. Calder Mackay

A. Calder Mackay

Howard W. Reynolds

Attorneys for Plaintiff

Service of this Praeipce acknowledged this 18 day of March, 1930.

Harry Graham Balter

H. G. Balter

Samuel W. McNabb

S. W. McNab

Attorneys for Defendant.

[Endorsed]: No 417-J In the District Court of the United States Southern District of California Northern Division San Joaquin Light & Power corporation, Plaintiff, v. United States of America, Defendant. Praeipce. Filed Mar 18 1930 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk Thomas R. Dempsey, A. Calder Mackay Security Building Los Angeles, Calif. Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA NORTHERN DIVISION.

SAN JOAQUIN LIGHT &)
POWER CORPORATION,)

Plaintiff,)

v.)

UNITED STATES OF AMERI-)
CA,)

Defendant.)

CLERK'S
CERTIFICATE

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 39 pages numbered from 1 to 39, inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the docket entries of proceedings before the District Court; citation; complaint; answer; findings of fact and conclusions of law; judgment; petition for appeal and order allowing appeal; assignment of errors; appeal bond for costs and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ _____ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....

and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Northern Divisiion, this..... day of April, in the year of Our Lord One Thousand Nine Hundred and Thirty, and of our Independence the One Hundred and Fifty-fourth.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in and
for the Southern District of
California.

By

W. J. V.
Deputy.